MONTANA LEGISLATIVE HISTORY

Chapter 279 19 81

Bill H 377 S _____ Original bill & history ✓ C

H. Committee on Business & Industry

Hearing Date(s) 2/2 ___C

2/16 ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Business & Industry

Hearing Date(s) 3/18 ___C

3/21 ___C

_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HEARING: 2/2
REPORT: DO PASS AS AMENDED, 2/17
2ND READING: 2/21, YEAS: 88; NAYS: 0
3RD READING: 2/25, YEAS: 95; NAYS: 0

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 3/3
HEARING: 3/18
BILL DIED IN COMMITTEE

HB 377—HEMSTAD, SMITH—TO GENERALLY REVISE AND CLARIFY PART 2 OF SECURITIES ACT OF MONTANA RELATING TO REGISTRATION OF DEALERS SECURITIES.
INTRODUCED: 1/20
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/20
HEARING: 2/2
REPORT: DO PASS AS AMENDED, 2/19
2ND READING: 2/21 YEAS: 92; NAYS: 0
3RD READING: 2/25 YEAS: 93; NAYS: 0

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 3/3
HEARING: 3/18
REPORT: 3/21, BE CONCURRED IN
2ND READING: 3/25, BE CONCURRED IN
3RD READING: 3/27, YEAS: 50

RETURNED TO HOUSE: 3/27
TRANSMITTED TO GOVERNOR: 4/1
ACTION: SIGNED, 4/6
CHAPTER 279

HB 378—HEMSTAD, SMITH—TO GENERALLY REVISE AND CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE SECURITIES ACT OF MONTANA.
INTRODUCED: 1/20
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/20
HEARING: 2/2
REPORT: DO PASS AS AMENDED, 2/16
2ND READING: 2/19 YEAS: 69; NAYS: 0
3RD READING: 2/24 YEAS: 97; NAYS: 1

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON BUSINESS: 3/2
HEARING: 3/18
REPORT: 3/21, BE CONCURRED IN
2ND READING: 3/25, BE CONCURRED IN
3RD READING: 3/27, YEAS: 50

RETURNED TO HOUSE: 3/27
TRANSMITTED TO GOVERNOR: 4/1
ACTION: SIGNED, 4/6
CHAPTER 280

HB 379—HEMSTAD, SMITH—INCREASING THE MAXIMUM SENTENCE FOR CRIMINAL VIOLATIONS OF THE MONTANA SECURITIES ACT....
INTRODUCED: 1/20
REFERRED TO COMMITTEE ON JUDICIARY: 1/20
HEARING: 1/30
REPORT: DO PASS, 1/30
2ND READING: 2/2 YEAS: 94; NAYS: 2

HOUSE BILL NO. 377

INTRODUCED BY Hansen-Smith

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY PART 2 OF THE MONTANA SECURITIES ACT RELATING TO REGISTRATION OF DEALERS AND SECURITIES; AMENDING SECTIONS 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact

INTRODUCED BILL

HB 377

business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. An application under this section is not filed until all required information is received.

(6) If no denial order is in effect and no proceeding is pending under subsection (10) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until ~~March 1~~ December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a

registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of

records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a

security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, ~~or~~ salesman, ~~or~~ investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection

(f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under ~~subsection (10) of~~ this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. ~~The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.~~

(11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a

salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 2. Section 30-10-202, MCA, is amended to read:

"30-10-202. Registration of securities. It is unlawful for any person to offer ~~to~~ or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless such security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter."

Section 3. Section 30-10-203, MCA, is amended to read:

"30-10-203. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily

determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for

registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208~~.~~; and

~~(l) such other information as the commissioner may require.~~

~~(3) A registration statement by notification is not filed until all required information is received by the commissioner.~~

~~(3)~~(4) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at ~~9--p.m. mountain standard time~~ noon the ~~second--full~~ 10th business day after the filing of the registration statement or the

last amendment, or at such earlier time as the commissioner determines."

Section 4. Section 30-10-204, MCA, is amended to read:

"30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) three copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date; ~~and~~

(h) a consent to service of process meeting the requirements of 30-10-208~~.~~; and

(i) such other information as the commissioner may require.

(2) A registration statement by coordination is not filed until all required information is received by the commissioner.

~~(2)~~(3) A registration statement by coordination under

HB 377

this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 ~~full~~ business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

~~(3)~~(4) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

~~(4)~~(5) Upon failure to receive the required notification and posteffective amendment with respect to the

price amendment referred to in subsection ~~(2)~~ (3) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection ~~(2)~~ (3) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections ~~(2)(b)~~ (3)(b) and ~~(2)(c)~~ (3)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 5. Section 30-10-205, MCA, is amended to read:

"30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection (1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in

subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to

accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or

(1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement,

a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208;~~.~~ and

~~(p) such other information as the commissioner may require.~~

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is

made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder."

Section 6. Section 30-10-206, MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in

HB 377

the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective ~~until~~ for a period of 1 year unless it is revoked by the commissioner, ~~or until~~

terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-202(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) During the period of public offering ~~in--the initial-distribution~~ of securities registered under the provisions of parts 1 through 3 of this chapter ~~by notification-or-qualification,~~ financial data ~~or--statements corresponding--to--those--required--under--the-provisions-of 30-10-203(2)-and-30-10-205-and-to~~ for the issuer's fiscal year and such other statements as the commissioner may require shall be filed with the commissioner annually, not less than 90 days after the end of each such year. If such statements are not certified, the commissioner may verify them by examining the issuer's books and records."

Section 7. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any issuer or broker-dealer who is ~~investigated-or~~ examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, ~~all--at--reasonable--rates customary--therefor--and--as--established-and-adopted-by-the commissioner-upon-duly-1y-1961,-and-annually-thereafter~~ upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization; however, no reimbursement of expenses may be

required for routine examinations performed in connection with an application for registration. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter."

Section 8. Coordination instruction. If ____Bill____ (LC 554) as introduced in the 47th Legislature is not passed and approved, the reference in 30-10-206(3) to

HB377

30-10-209(1)(b) (as amended in section 6 of this act) shall be changed to 30-10-209(2).

-End-

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BUSINESS AND INDUSTRY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 349 (Cont.)	from misuse of products; and establishing a rebuttable presumption of freedom from defect.	1/19	Underdal Wallin Lund Kolstad (Others)	2/3	TABLED 2/16	
HB 350	To assure that once an applicant passes one portion of the real estate exam, he is not required to repeat that portion & eliminating any restrictions on how frequently an applicant can take the exam; amend 37-51-303, MCA.	1/19	Meyer Goodover McCallum (Others)	2/3	DO PASS AS AMENDED	2/3/81
HB 360	Amend 16-4-301 & 501 to allow a special permittee to sell wine as well as beer and to eliminate the two day minimum fee for certain permittees.	1/20	Metcalf Steve Brown Kessler	1/29	DO PASS AS AMENDED	2/5
HB 376	To generally revise & clarify Part 1 of the MT Securities Act relating to general application of the act; amend..., renumber... & renumbering & amend 30-10-107.	1/20	Hemstad E. Smith	2/2	DO PASS AS AMENDED	2/18
HB 377	To generally revise & clarify part 2 of the MT Securities Act relating to registration of dealers & securities; amend...	1/20	Hemstad Smith	2/2	DO PASS AS AMENDED	2/18
HB 378	To generally revise & clarify prohibited practices & penalties under the MT Securities Act; amend...	1/20	Hemstad Smith	2/2	DO PASS AS AMENDED	2/16

#18

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 2, 1981

SUMMARIES FOR

HOUSE BILLS 376, 377, 378 and 380 - all introduced by Rep. Hemstad and Senator Smith as a package to revise the Securities Act of Montana.

HOUSE BILL 376 expands the definition of "security," changes some of the provisions of "exempt securities" and "exempt transactions", and allows the securities commissioner to deny or revoke any exemption.

HOUSE BILL 377 revises the regulations and procedures for registration of dealers and securities.

HOUSE BILL 378 revises the law on fraudulent and prohibited practices and changes from 6% to 10% the interest that may be recovered on fraudulent sales.

HOUSE BILL 380 revises and increases fees by generally doubling the amounts to be charged.

AMENDMENTS NEEDED: In each of these bills the title should be amended to change "Montana Securities Act" to "Securities Act of Montana."

HOUSE BILLS 376, 377 same amendment -

Title, line 6
Following: "OF THE"
Strike: "MONTANA SECURITIES ACT"
Insert: 'SECURITIES ACT OF MONTANA"

HOUSE BILL 378 -

Title, lines 6 and 7
Following: "UNDER THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BILL 380 -
Title, line 6
Following: "UNDER THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

OPPONENTS: None

Rep. Hemstad did not choose to close.

HOUSE BILL 377 -

REP. ANDREA HEMSTAD, House District #40, Cascade County, co-sponsor, explained HB 377 revises the regulations and procedures for registration of dealers and securities. See EXHIBIT B.

OPPONENTS: None

QUESTIONS -

The full disclosure act requires that so much power should be given to the state securities and exchange commissioner. The state's charge is known as the fair, just and equitable aspect of the offering. Are you sharing the risk? If all the money goes into an account and you lose, you have a fair risk. It is merely guaranteeing by review of the commissioner that you are going to get your fair share of risk for the amount of money you are going to put up.

Registration by Notification - An issuer who has been in business for a long time and has paid its dividends, can file a secondary offering also subsequent to the original issue. If that stock was ever registered in the state before they can come back in and register. They are asking for more time and the additional ability to request other information (this is caused by the exotics). They want the power to go there, look for all drilling logs, and power to have a statement be in there that this is what the log showed. They want the ability to go get the logs, want the ability to get any information on an offering, knowledge that it doesn't belong to a certain party - have to be able to get correct answers. Registration by qualification powers are basically already there, so they are not added. Powers are listed under a statement required for qualification.

Is the risk just? Is it equitable? Registration by coordination means that registration is coordinated with the FECC. If it meets various requirements, they will allow the offer concurrently with the FECC.

Rep. Wallin - Does this pertain to grain selling cooperatives? Mr. Tucker - Have to go through some form of registration. The necessity was seen but the change in the Uniform Act would not accept cooperatives because they have more to offer than just their capitalization stock.

Mr. Tucker said their department has certain time contraints - 10 days after receipt of a registration statement; 30 day's for a salesman's application. Unless they have all the information, it is not considered filed. Because of time constraints, they would have some people filing for these without waiting for them to ask for it.

Rule making authority already exists. There is a question as to whether a statement of intent is necessary. Mr. Tucker said this is just to clarify the rule.

BRUCE LARSON, Auditor, said an application is not filed until all the information is received. Maybe a statement of intent is necessary. It is hard to decide what information we are going to require. Basically, we are doing here what other states in the area are doing.

Rep. Fabrega said on page 15, line 7 it is clarified for the registration statement that it is 10 'business' days. Page 3, line 8 shows the applicant shall obtain whatever information the commissioner requires.

Rep. Harper thought the actual filing date could be put off by requesting more information. In case of some requirement overlooked, the application could be considered as having never been filed. Would a statement of intent help?

Mr. Tucker said it would be virtually impossible for them to state all the additional information that would be required by rule because they all differ. The customary things the department is going to ask for are covered in the application for a security. Unaudited financial statements could be required to be audited, but this is not always required to register in order to cut down on expense. However, it may be that that would be requested a little later.

Rep. Fabrega asked Mr. Tucker to bring a proposed statement of intent for the potential authority in this bill to help enforce the code.

Rep. Hemstad did not choose to close.

HOUSE BILL 378 -

Rep. Andrea Hemstad, House District #40, Cascade County, co-sponsor, said HB 378 would generally revise and clarify prohibited practices and penalties under the Montana Securities Act. It would provide for increasing the interest award from 6% to 10% in order to keep the interest award current with present inflationary trends. See EXHIBIT C.

OPPONENTS: None

QUESTIONS -

Rep. Andreason - Why distinguish between fraudulent and other practices? Mr. Larson - Many county attorneys have problems alleging problems because it says prohibit practices and it gives no kind of crimes being committed. It will make it easier for county attorneys to allege a crime.

Rep. Harper - Why 10%? Mr. Larson - This is recovery. Under the old statutes it was 6%. The present law in the civil statute has been raised to 10% and our act is in conflict. Merely just changing to agree with other statutes, both for persons who have been wrongfully sold securities and interest on any judgment received. Rep. Harper - If the going rate is 18%, the violator is being given an 8% break. The minimum interest was changed from 6% in the case of a court judgment; 9% interest is now charged against a late payment. It is a question of the amount of rate. There is a difference between the usury limit and the other, and that is the interest you can make from your money. You do become an involuntary lender under this type of investment. The average is about 12%. You could bring action

1. HB 377

LC 551

Section 1

30-10-201(5). The amending language is intended to clarify when an application for registration under this section is considered "filed."

2. 30-10-201(7). The change in dates, and the grant of additional power to the commissioner to change the date, are requested to allow the commissioner to conform registration periods to a period which may be established by the North American Securities Administrators Association for uniform registration purposes.

3. 30-10-201(10)(f). The amendment is intended to subject investment advisors to the same standards and scrutiny as broker-dealers or salesmen. The change would allow the commissioner to deny, suspend or revoke a registration of an investment advisor if the applicant or registrant is the subject of an order of another state or the federal securities and exchange commission denying, suspending or revoking specified privileges.

4. 30-10-201(10)(i). Deletion of the words "subsection 10 of" is intended to make the denial, suspension and revocation powers of the commissioner applicable to conditions imposed by the entire section rather than to just those imposed in the subsection. For example, broker-dealers and investment advisors, under 30-10-201(9), are required to keep accounts and records. Their failure to do so should be grounds for revocation of their registration.

5. 30-10-201(10)(j) The proposed deletion of language in this subsection is intended to resolve conflict between the deleted language and language in the introductory part of this same subsection 10. The commissioner, by reason of the introductory language in subsection 10, already has suspension powers of a summary nature, and restatement of those powers in this sub-part (j) is unnecessary. The deleted language, furthermore, is

not part of the Uniform Securities Act from which this section, 30-10-201, was adopted. It is, therefore, difficult to ascertain its true intent.

Section 2

6. 30-10-202. The change of language proposed in this section is intended to conform the statute to the Uniform Securities Act from which it was adopted. The intent of the section is to make both an offer and a sale of an unregistered security a violation of the Act. As the section presently reads, there is confusion as to whether only an offer is a violation.

7. Section 3

30-10-203(2)(L). An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by notification. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register their securities offering because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

8. 30-10-203(3). The addition of this subsection is intended to clarify when an application for registration under this section is considered "filed."

9. 30-10-203(4). A change is proposed extending the time the commissioner has to review a registration statement by notification after it is filed. A longer period for review is necessary due to substantial increases in securities registrations in recent years.

Section 4.

10. 30-10-204(1)(i). An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by coordination. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

11. 30-10-204(2). The addition of this subsection is intended to clarify when an application for registration under this section is considered "filed."

12. 30-10-204(3)(b). The period for review of applications for registration by coordination is extended by the change proposed for this subsection. A longer period for review is necessary due to a substantial increase in securities registrations in recent years.

13. 30-10-204(4) and (5). Changes appearing in these subsections are the result of renumbering because of above-mentioned changes.

Section 5

14. 30-10-205(1)(p). An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by qualification. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

Section 6

15. page 24 30-10-206(3). The proposed amendment of this subsection sets forth the effective period of a registration of securities. Currently, this section fails to clearly state that a registration of securities is effective one year only, unless it is earlier revoked, terminated, or renewed. The changes are not substantive in nature, but are only intended to clarify the language and intent of the subsection.

16. page 25 30-10-206(5). The changes requested for this subsection are primarily for clarification purposes only. The commissioner currently receives financial reports on issuers under all types of securities registrations. It is the intent of the proposed language to conform the law to current practices.

The commissioner also requests replacement of the language requiring filing of statements corresponding to those required under 30-10-203(2) and 30-10-305, with language permitting the commissioner to request any additional information he so desires. There are instances where aspects of a securities offering may change drastically during the period of effectiveness. Financial data, or the information provided in the statements required under 30-10-203(2) or 30-10-305, alone, are not sufficient to provide the commissioner the information needed to judge whether the public offering should continue.

Section 7

17. page 25 30-10-210. Deletion of the term "investigated" is intended to eliminate confusion that may result from a comparison of that term to the word "examined." The commissioner also proposes elimination of language which presently requires him to establish the reasonable and customary rates to be charged for expenses incurred in the course of performing examinations.

Examinations are not performed regularly, and computation of reasonable expenses on a case-by-case basis would more accurately assess the actual costs of a particular examination. This provides a more equitable billing system for the persons examined.

Proposed Amendments to House Bill 377:

Page 3, line 9 and line 10
Following: "requires." on line 9
Strike: line 9 and line 10 in its entirety.

Page 3, line 11 through line 19
Following: "(6)" on line 11
Strike: line 11 through line 19 in its entirety.
Insert: "When the registration requirements are complied with, the commissioner shall approve the registration."

Page 12, line 18 through line 20
Following: line 17
Strike: line 18 through line 20 in its entirety.

Page 12, line 21
Following: line 20
Strike: "~~(3)~~(4)"
Insert: "(3)"

Page 14, line 22 through line 24
Following: line 21
Strike: line 22 through line 24 in its entirety.

Page 14, line 25
Following: line 24
Strike: "~~(2)~~(3)"
Insert: "(2)"

Page 15, line 13
Following: line 12
Strike: "~~(3)~~(4)"
Insert: "(3)"

Page 15, line 24
Following: line 23
Strike: "~~(4)~~(5)"
Insert: "(4)"

Page 16, line 1
Following: "subsection"
Strike: "~~(2)~~(3)"
Insert: "(2)"

Page 16, line 5
Following: "subsection"
Strike: "~~(3)~~(3)"
Insert: "(2)"

Page 16, line 11 and line 12
Following: "subsections" on line 11
Strike: "~~(2)(b)~~(3)(b) and ~~(2)(c)~~(3)(c)"
Insert: "(2)(b) and (2)(c)"

Page 25, line 1
Following: "period"
Strike: "of public offering"
Insert: "in which there is an offering"

Page 25, line 4
Following: "~~qualification~~,"
Insert: "and for which there is no exemption under 30-10-104 or 30-10-105,"

-end-

ROLL CALL

HOUSE BUSINESS AND INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION, 1981

Name	Date													
ANDREASON, Aaron														
BERGENE, Toni														
ELLERD, Bob														
ELLISON, Orval													E	
FABREGA, Jay														
HARPER, Hal														
JACOBSEN, Glenn														
JENSEN, Ray														
KESSLER, Gerald														
KITSELMAN, Les														
MANNING, Dick									E					
METCALF, Jerry														
MEYER, Darryl							E							
O'HARA, David														
PAVLOVICH, Bob														
ROBBINS, Ken														
SCHULTZ, Jim														
VINCENT, John														
WALLIN, Norm														
VERDON, Paul, researcher														

#28

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 16, 1981

SUMMARIES FOR

HOUSE BILL 597 -

Introduced by Rep. Ernst, requires that in addition to being managed by a person with 10 years experience as a barber, a barber school employ as instructors only persons licensed as instructors under the rules of the Board of Barbers.

HOUSE BILL 612 -

Introduced by Rep. Bardanouve, brings transactions between crop producers, crop sellers, and crop buyers under the definition of "between merchants" as understood in the Uniform Commercial Code with the assumption that all parties have the knowledge or skill of merchants. It provides a contract is enforceable if payment has been made for part of the goods and if the agreement is evidenced by an instrument or document received by the seller that indicates the buyer believes a contract exists.

HOUSE BILL 625 -

Introduced by Rep. Fabrega and others, permits a retailer of goods to impose an additional charge of 1-1/2% of the overdue balance on all credit accounts 30 days past due, provided a statement is rendered at the end of each month showing the transactions during the month, the balance due, the amount of late payment charge and its simple interest equivalent. This bill might need July 1 effective date.

HOUSE BILL 671 -

Introduced by Rep. Hurwitz by request of the Department of Professional and Occupational Licensing. Raises the osteopath's certificate renewal fee from $15 to $25 and for a person not in active practice from $7.50 to $17.50; removes the requirement that a podiatrist record his license with the county clerk and raises the podiatrist's license renewal fee from $35 to $50; requires an applicant for examination for licensing as a nursing home administrator to pay an additional fee above the $25 specified and provides for a late fee to be imposed for failure to pay license or registration fee or to complete education requirements; raises from $50 to $150 the fee for a person whose chiropractic license has been revoked and later restored; raises fee from $80 to $100 for renewal of licenses as a hearing aids fitter; raises fee from range of $20 to $50 to range of $40 to $100 for renewal of psychologist's license; authorizes the Board of Cosmetologists to require a separate, non-refundable application fee of $10 in addition to license fees; raises the water well contractor's license renewal fee from $25 to a figure to be set by the Board of Water Well Contractors but not more than $50. This bill coordinates with SB 412. If SB 412 passes, the only part of HB 671 that will remain valid is subsection (2) of Section 2 in regard to eliminating the requirement for podiatrists to file license with the county clerk.

HOUSE BILL 713 -

Introduced by Rep. Fabrega and Sen. Goodover, adopts the Uniform Arbitration Act and amends or repeals various sections of Montana law to conform.

Rep. Jacobsen moved HOUSE BILL 105 DO PASS. Motion failed with a 2-15 vote. Two members were absent. So HB 105 leaves the committee as a DO NOT PASS.

HB 105 would put royalty owners under the same protection as the state is at the present time. The stub for state reports is much more complete than is the stub for royalty owners.

Rep. O'Hara moved HOUSE BILL 106 DO PASS. Rep. Harper made a substitute motion that HB 106 be amended. Amendment is shown on the standing committee report. Motion was adopted unanimously. Rep. O'Hara continued his motion that HOUSE BILL 106 DO PASS to HOUSE BILL 106 DO PASS AS AMENDED. Motion carried unanimously.

A motion was made to amend HB 188 on page 1, line 10, following "nuisance" to strike "to the state" and the motion was adopted. Rep. Ellerd moved that HOUSE BILL 188 DO PASS AS AMENDED. Motion carried with Rep. Pavlovich, Ellison, Andreason, Jensen, Manning voting no. Rep. Kessler was absent.

Rep. Jensen moved that HOUSE BILL 459 be tabled. Motion carried with Rep. Vincent voting No.

Rep. Fabrega moved HOUSE BILL 282 which he sponsored BE TABLED. Motion carried unanimously.

Rep. Kitselman moved HOUSE BILL 376 DO PASS. He further moved that proposed amendments be adopted, and they were unanimously accepted. Rep. Harper further moved that the title be amended, and this motion was adopted unanimously. Rep. Kitselman amended his original motion to HOUSE BILL 376 DO PASS AS AMENDED. It was unanimously adopted.

Rep. Kitselman moved HOUSE BILL 377 DO PASS. He further moved that the proposed amendments that had been agreed to be adopted. They were unanimously approved. Rep. Harper moved that the proper title adjustment be adopted which was unanimously accepted. Rep. Kitselman changed his motion to HOUSE BILL 377 DO PASS AS AMENDED. (The standing committee report shows the amendments for HB 376 and HB 377.)

Rep. Harper moved that HOUSE BILL 378 DO PASS. He further moved to change the title from Montana Securities Act to Securities Act of Montana. Motion was unanimously adopted. Motion was changed to HOUSE BILL 378 DO PASS AS AMENDED, which was unanimously adopted.

Rep. Harper moved HOUSE BILL 380 DO PASS. He further moved amendment to the title be adopted, which motion carried unanimously. He then moved HOUSE BILL 380 DO PASS AS AMENDED, and it was unanimously adopted.

HOUSE BILL 385 -

Rep. Manning moved HOUSE BILL 385 DO PASS. Rep. Harper moved section 1 be stricken in its entirety and the old language be reinserted, and this motion was unanimously adopted.

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
321	2/13	3/13	3/14				3/14		
346	2/10	3/11	3/11				3/11		
STATEMENT OF INTENT HB 346			3/11				3/11		
350	2/10	3/9	3/9					3/9	
360	2/13	3/11	3/11				3/11		
376	3/4	3/18	3/21 Tabled						
377	3/4	3/18	3/20				3/20		
378	3/2	3/18	3/20				3/20		
380	3/2	3/18	3/20				3/20		
385	3/5	3/20	3/21					3/21	
396	2/13	3/9	3/9				3/9		
409	3/2	3/12	3/14				3/14		
425	3/2	3/20	3/21				3/21		
430	3/2		3/4	MOVED TO LABOR COMMITTEE					
448	3/3	3/18	3/26					3/26	
450	2/19	3/9	3/4	MOVED TO AGRICULTURE COMMITTEE					

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 18, 1981

The regular meeting of the committee was called to order at 10 a.m. by Chairman Hazelbaker in room 404 of the Capitol Building on Wednesday, March 18. All members were present.

Scheduled for hearing were HOUSE BILLS 376, 377, 378, 380 and 448.

HOUSE BILL NO. 448: Representative Nordvedt, District 77. This bill deals with various changes in the regulation of domestic life insurance companies. There are only three in the state. Valuation of single premium life insurance policies for determining the financial condition of insurers will be at 5 1/2% interest. The bill also prescribes methods for valuation of debt securities, for correction of deficiencies in reserve deposits, for investing in the stock of subsidiaries, for investing in real estate mortgages and real estate. The bill also puts a ceiling of 6 1/2% on the interest to be used for computing single premium life insurance cash surrender values. There are between 4 and 500 out of state companies licensed to do business in the State of Montana. Basically, this bill is to remedy some of the problems. We hope the state can create some good regulations so they can compete with out of state companies. He went through the bill and explained it.

Page 5, line 12 deals with the good-will
page 7, line 8 changed from 4 1/2% to 5 1/2%, the interest rate used for evaluating - premium life insurance policy
page 10, line 22 This is the most important feature of the bill. Some of the assets would have to be deposited with the insurance office here in Helena. The market value would be down if they had to liquidate today.

This would allow those assets to be valued at something more in line with the actual value paid, amortized to their liquidation value. It puts an undue burden on the domestic companies who do not have to discount.

Page 12, line 20, a technical change in language.
Page 17, line 8, We are taking out a section. This section forbids insurance companies from participation in mortgages. By striking that section we would allow domestic companies to participate in mortgages.

The next section would allow them to participate in wrap-around mortgages.

Page 19, line 24, this would increase from 5% to 10% of assets that can be invested in real estate.

REPRESENTATIVE NORDVEDT: In closing I want to state again what we are attempting to do with this bill. The new procedure for the reserve requirements would take a hearing. It would permit the use of good-will in the value of some assets that are deposited with the state. That would make it easier for the company to meet the reserve requirements. It would allow investments of more assets in real estate and in wrap-around mortgages. They could borrow cash at market interest rates, which are well above the current 6 percent limit. Montana has only three in-state companies while some 400 out-of-state firms operate here. Life of Montana and its subsidiary Great Western Life account for two of the firms. Life of Montana has been a boon to Bozeman economy. It's important that we give our domestic insurance industry a chance to grow. That's $100 million dollars a year that is leaving the state. Inflation nullifies the claims that this bill increases risk to customers money. The low grade securities are the high grade bonds. They're a guaranteed way to lose the policy holders money.

With no further discussion, the hearing closed on House Bill No. 448.

REPRESENTATIVE HEMSTAD: The four bills I am presenting are all companion bills, but I will go through them one at a time and explain each one and then present them as a package.

HOUSE BILL NO. 376: The bill primarily revises and clarifies part 1 of the Securities Act of Montana. Besides cleaning up the language, the bill expands upon the definition of a security by incorporating risk capital theory. It adds an exemption from registration for securities listed on approved exchanges, it grants the commissioner more review and examination powers with respect to the discretionary exemptions. It revises the isolated transaction exemption. It deletes the manual exemption and substitutes an exemption for secondary trading of securities reported on the quotations system operated by the National Association of Securities Dealers, and, finally it brings together a new section for the review powers of the commissioner with respect to certain exemptions, which are enumerated. This bill, will hopefully, better enable the State Auditor as the Securities Commissioner to regulate the securities industry in Montana. So, there would be more protection for the Montana investor.

RICK TUCKER and BRUCE LARSON, Attorney are here from the department to answer questions.

SENATOR GOODOVER: What was the need for all of the amendments and Representative Hemstad said that they were just to show how the bill was changed, they were not new amendments.

HOUSE BILL NO. 377: The State Auditor as ex Officio Securities Commissioner requests that we pass this bill. The bill generally revises and clarifies Part 2 of the Montana Securities Act. Besides cleaning up the language it also revises securities laws regulating

the registration of securities and it revises practices and procedures in examining persons involved in the offer or sale of securities. Applications would contain information required.

MR. TUCKER: Some of this is cleaning up the garbage. It just clears it up. Variable annuities are a creature of insurance companies. A lot of the language is antiquated.

HOUSE BILL NO. 378: There are two major changes in this bill. In section 1, the intent of the proposed additon of language in this section is to clarify the jurisdiction of the securities commissioner in regulating securities promoters operating from this state who sell only to customers outside the state. The purpose of the amendment is to prevent Montana from becoming a "safe harbor" for fraudalent promoters, and to allow this state to participate in joint enforcement efforts with other states against this type of fraudulent sales practice.

In section 2, the proposed changes provide for increasing the interest award, from six to ten percent per annum, allowed in civil judgments. The change is requested to keep the interest award current with present inflationary trends.

Actually, the bill revises and clarifies prohibited practices and penalties under the Securities Act. Prohibited practices would apply to securities transactions in the state, coming into the state, or from the state. The penalty on civil liability is increased to 10%.

HOUSE BILL NO. 380: This bill revises the fees charged under the Securities Act by generally doubling the existing fees. Additional fees and increases in existing fees are proposed for this section. Securities registration fees, on new issues, will be raised from $100 to $200 on the first $100,000 of the new issue, and will be raised from 1/20 of 1% to 1/10 of 1% on the excess of the new issue over $100,000. The maximum fee of $1,000 remains the same.

Renewal fees on securities registrations will be changed from 1/20 of 1% of the aggregate offering with a minimum fee of $100 and a maximum fee of $1,000 to 1/10 of 1% of the aggregate offering with a minimum fee of $200 and a maximum fee of $1,000. A late renewal fee of $50 is also requested to prevent delinquent renewals.

Registration fees for broker-dealers and investment advisors will remain the same, but an increase from $25 to $50 is proposed for salesmen registration fees. Fees for filing amendments to registrations are requested to defray record-keeping costs associated with it. Finally, the fee for exemption requests is raised from $25 to $50. The fee increases requested in this bill represent the first such increases since 1962, except for salesmens fees.

SENATOR BLAYLOCK: Are these fee increases really needed to keep abreast,

MR. TUCKER: Yes, without this fee increase, we used to average about 40 applications and now we average over 100. We probably exceed a 4 to 5 billion increase. It will probably bring in about $125,000 per year.

MR. BLAYLOCK: Have you conferred with the people affected by these fees and this bill.

MR. TUCKER: Yes, we have.

SENATOR REGAN: Does it go to the general fund, and the answer was yes.

There was general discussion about a fiscal note for the feed bill part.

Discussion that Ed Smith would carry this on the floor because he is also a sponsor.

With no further discussion and no more questions the hearing closed on House Bills 376, 377, 378 and 380.

SENATOR HAZELBAKER ASKED THE PEOPLE FROM THE DEPARTMENT TO STAY.

SENATOR HAZELBAKER: We would like to ask some questions about House Bill No. 257, since you were not present yesterday when we had the hearing. This is the mechanical breakdown bill.

VALENCIA LANE: We don't have any problem with it. The exam would not cover what they need to know. We have a similar exemption for people who are dealing with insurance.

After some discussion the people from the department left.

ACTION WAS TAKEN ON THE FOLLOWING BILLS:

HOUSE BILL NO. 257: Senator Goodover moved be concurred in. The motion carried with the vote unanimous. Senator Goodover will carry on the floor.

Discussion was held on House Bill No. 574 and House Bill No. 710. The question was raised as to the sharing of a commission with a resident agent. Discussion followed. It was mentioned that the agents do not pay a premium tax, only the company pays the tax.

NAME: B.G "Rick" Tucker DATE: 3/18/81

ADDRESS: C/o State Auditor

PHONE: 449-2040

REPRESENTING WHOM? State Auditor / Securities

APPEARING ON WHICH PROPOSAL: HB 376, 377, 378, 380

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Brian Lewis DATE: 3/18/91

ADDRESS: Helena

PHONE: 444-2421

REPRESENTING WHOM? State Auditor

APPEARING ON WHICH PROPOSAL: HB 316 317 318 319

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Review of Amendments: HB 376

a. Page 1, line 6: The title of the bill is changed to reflect the correct short title of the Securities Act.

b. Page 1, line 22 through 24; and Page 2, line 7 through 10: A change in the wording of subsection (2) of Section 30-10-103 is made for clarification purposes only.

c. Page 6, line 5 through 9: The definition of a security is expanded by incorporating the risk capital test. The risk capital test is an alternate definition of an ivestment contract. The current trend in many states (for example, California, Ohio, Oregon, Hawaii, and Washington) is to adopt risk capital theory in order to acquire a more flexible concept of a security for requlation purposes.

d. Page 6, line 20: The definition of a security is clarified with respect to insurance or endowment policies, and annuity contracts. Fixed policies or contracts, unlike variable policies or contracts, are not securities.

e. Page 8, line 10 through 15: The exemption from registration available for insurance or endowment policies, or annuity contracts which provide variable returns, is clarified. Policies or contracts providing variable returns are securities subject to the registration requirements of the Montana Securities Act. Registration, however, should not be required when the variable policies or contracts are regulated by the insurance commissioner and registered pursuant to the federal Securities Act of 1933.

f. Page 9, line 13 through 23: An "exchange" exemption is proposed allowing an exemption for all securities listed on various national or regional exchanges. This exemption is not new in that it existed prior to 1978. The Montana Securities Department finds that elimination of the exemption provides minimal additional protection for the investing public and results in the expenditure of much time and effort by the commissioner's staff to assure registration requirements are met. In any case, investor protection is accomplished with this exemption because the approved exchanges require issuers to meet certain minimum listing requirements.

g. Page 9, line 24 through page 11, line 15: Numbering changes are made because of the insertion of the exchange exemption.

h. Page 12, line 6: Language pertaining to fees is stricken because of an intent to consolidate all fee matters in 30-10-209.

i. Page 12, line 23 through page 13, line 17: The discretionary exemption arises in special and unusual situations which require greater supervision by the commissioner to assure protection of the investing public. In this regard, changes are requested to: 1) require persons requesting the exemption to preserve for 5 years all records pertaining to the security so exempted; and 2) to give the commissioner examination powers with respect to the records to be preserved.

Examination costs, other than those costs associated with routine examinations performed in connection with the grant of the exemption, are to be borne by the issuer or broker-dealer requesting the exemption.

Present language in the discretionary exemption (page 13, line 15 through 17) pertaining to fee matters is stricken with the intent to consolidate all fee matters in 30-10-209.

j. Page 13, line 22 through page 14, line 12: The exemption for nonissuer isolated transactions is amended to eliminate confusion regarding its application. It has been questioned whether the exemption allows only "one" transaction, or whether a person can make as many offers or sales as he/she wants as long as they are "isolated." To resolve the confusion, the State Auditor proposes adoption of language used by other States in regulating this area of concern. Specifically, the proposed language allows an owner of securities, who is not a broker-dealer, salesman, issuer, or underwriter, to dispose of the securities as long as he or she does not do so in repeated and successive transactions of a like character.

k. Page 14, line 13 through 15: The changes made here are for clarification purposes only.

l. Page 14, line 16 through page 15, line 4: The "manual" exemption presently found in 30-10-105(2)(a)(i) (see Page 14, line 16 through 20) provides little or no protection for the investing public. An issuer of a security can be listed in a manual merely by paying a fee and submitting a balance sheet. The securities commissioner proposes replacement of the manual exemption with an exemption based on securities which are reported on the NASDAQ (Nas-deck) quotation system.

The proposed exemption, like the former "manual" exemption, is a secondary trading exemption (Secondary trading is all trading of a security after its intial issuance). Protection of the investing public is accomplished by the listing requirements of NASDAQ. In other words, securities must meet certain financial requirements before they will be allowed to be reported (reported) on NASDAQ.

m. Page 15, line 11 through page 16, line 5: The denial and revocation powers in 30-10-105(2)(b) are striken with the intent to incorporate all such powers into new section 30-10-106.

n. Page 16, line 8 through 14: Changes originally proposed by the State Auditor are withdrawn because they would tend to work a hardship on broker-dealers without providing a significant increase in investor protection.

o. Page 17, line 8 and line 11: The changes are for clarification purposes only.

p. Page 19, line 8 through 11: Some aspects of this exemption, as it presently reads, have no apparent protective qualities for Montana investors. In addition, it is difficult to determine the proper application of this subsection because of its confusing language. The State Auditor thus proposes striking confusing and needless parts of the exemption in an effort to clarify its meaning and application.

q. Page 19, line 13 through 16: Sections 4 and 5 of this bill are for renumbering purposes only. Section 5, as it appeared in the first reading of this bill, also proposed changes appearing in the stricken language on page 21, lines 6 and 7. These changes, regarding when an application for registration is considered to be "filed" with the commissioner, are now viewed as unnecessary in light of changes proposed in House Bill 377 pertaining to when registrations become effective. For this reason, the entire language of Section 5 of this bill, following the renumbering instruction on Page 19,line 16, is stricken.

r. Page 22: New Section The proposed new section granting the commissioner review powers over certain enumerated exemptions is in accord with the securities laws of the majority of other states. These powers are necessary because it is virtually impossible to structure a general exemption to fit every security or transaction that might arise under it. In this regard, it is difficult to assure investor protection by having an inflexible exemption over which the commissioner has no review. The proposed new section combines former exemption review powers and adds additional review powers with respect to exemptions which have proved troublesome.

-end-

ROLL CALL

Wed.

BUSINESS and INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION -- 1981 Date 3/18/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold	✓		
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

DATE March 18, 1981

COMMITTEE ON B & I HOUSE BILL NO. 377

Representative Hemstad

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
[illegible]	Ft. Hunt / Santa	✓	
"Dick" Tucker	" " "	✓	

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 20, 1981

The regular meeting of the Business and Industry Committee was called to order by Chairman Hazelbaker at 10 a.m. in room 404 of the Capitol Building on Friday, March 20.

ROLL CALL: All members present with the exception of Senator Dover, excused.

HOUSE BILL NO. 385: Representative Pistoria, District 39. This bill increases the annual report fee for each individual or family unit covered by a health service corporation from 20 cents to 50 cents, subject to a minimum of $100. The corporation is required to submit contracts and forms to the insurance commissioner for approval at least 30 days prior to use. The commissioner is required to examine each health service corporation at least once every four years. I would like to thank Jay Fabrega for a job well done. The House B & I Committee made changes that are more effective and strengthen the bill.

The bill accomplishes practically everything I asked for, and what the senior citizens have been wanting for some time. The control of the non-profit health insurance corporations such as Blue Shield and Blue Cross, the Blues, as they are called by the State Auditor, Sonny Omholt, who is also the Insurance Commissioner. It is the first time the blues will be controlled by the Insurance Commissioner as the private health insurance corporations are.

I would like to give a few reasons why I introduced this bill. The strong feelings and public demand due to many complaints, which I received from people through letters and telephone calls, who have had to have medical care.

1. The long delays in payment of claims
2. In many cases, the citizens did not receive or were denied the just amount coming to them for their illness.
3. In some cases the amount coming to them was less, and they could not afford to hire an attorney and court costs to defend themselves. Therefore, they accepted the amount of the claim.

I have a couple of letters that I received that I would like you to read, which verifies what I have stated. I understand that Blue Shield and Blue Cross will not oppose this as written up and will adhere to it. The bill makes one change and has two new additions. It also has a statement of intent, which Mr. Fabrega will explain, because it came from his committee.

SENATOR BOYLAN: Maybe this study would show us if we should or should not do that. I think that a lot of capital is going out of the State of Montana.

MR. YOUNG: We try to buy in Montana. We actually buy 9 out of 10 mortgages offered to us. However, small business is not best served in Montana. We would have some recommendations to help start small businesses. It is the small emerging business that has a gap, because of the risk for banks.

REPRESENTATIVE THOFT: The very fact that there is a question needs to be resolved. I would hope that you would give your approval for this study. I have no argument with the Board of Investments but I think we need this money in Montana.

With no further discussion the hearing closed on House Joint Resolution No. 29.

EXECUTIVE SESSION: 11:30 a.m.

There was general discussion about the makeup of a committee to be appointed to do a study of the investments as asked for in the House Joint Resolution No. 29.

CHAIRMAN HAZELBAKER commented that because the bills were related House Bills 376, 377, 378 and 380 would be discussed at the same time, but they would take 376 first and Greg would explain each one.

GREG PETESCH: Staff Attorney. He explained and expanded on the definition of a security, and explained risk capital and explained that the bill would clarify variable policies,

SENATOR REGAN: Would you have to have a brokers license to sell.

MR. PETESCH: No, and he went on to explain that the definition of risk capital grew out of a California court case.

ACTION ON HOUSE BILL NO. 376:

SENATOR GOODOVER moved be concurred in. The motion carried with the vote unanimous. Senator Smith will carry since he is a sponsor.

HOUSE BILL NO. 377:

MR. PETESCH explained that the bill conforms to the Uniform Securitie Act. It would allow ten business days for the review of an applicatic

SENATOR REGAN: Would the kinds of questions the Commissioner could ask be on some kind of a form.

SENATOR LEE commented that this concerned him also. He gave examples

of kinds of abuses that could come about. Then followed general discussion about what kinds of information might be required. A lot of concern was expressed about this.

MR. PETESCH explained that this would be for registering of securities for offering. You could not require information from a purchaser. He went on to clarify other items.

ACTION ON HOUSE BILL NO. 377:

SENATOR BLAYLOCK moved that the bill be concurred in. The motion carried with the vote unanimous. Senator Smith will carry because he is a sponsor.

HOUSE BILL NO. 378:

MR. PETESCH explained that the bill clarifies fraudulent securities and gives a definition.

SENATOR BLAYLOCK moved that the bill be concurred in. The motion carried with the vote unanimous. Senator Smith will carry because he is a sponsor.

HOUSE BILL NO. 380:

SENATOR KOLSTAD moved be concurred in. The motion carried with the vote unanimous. Senator Smith will carry because he is a sponsor.

HOUSE BILL NO. 448:

This bill deals with various changes in the regulation of domestic life insurance companies.

SENATOR REGAN moved be not concurred in. Discussion followed about the problems with the bill. Senator Regan said she felt what was being done was eroding the margin of safety of the money of the policy holders. On page 19 there are a number of things that an insurance company may not invest in. I am concerned about page 19, the mining investments. It seems to me it allows them to do it.

There was general discussion about the pros and cons of the bill.

SENATOR REGAN commented that they do not allow good-will. She went through the bill and pointed out her concerns.

Review of Amendments: HB 377

a. Page 1, line 6: The title of the bill is changed to reflect the correct short title of the Securities Act.

b. Page 3, lines 9 and 10: The proposed amendatory language for the subsection is replaced with new amendments found at line 19 through 21 of this page. The proposed language at line 19 through line 21 is intended to simplify the registration process by deleting automatic effectiveness dates. The proposed language states that the Commissioner must approve a registration of a Securities Salesman, Broker-Dealer or Investment Advisor when the registration requirements are met.

c. Page 3, line 23 through 25: The change in dates, and the grant of additional power to the commissioner to change the date, are requested to allow the commissioner to conform registration periods to a period which may be established by the North American Securities Administrators Association for uniform registration purposes.

d. Page 6, lines 15 and 16: The amendment is intended to subject investment advisors to the same standards and scrutiny as broker-dealers or salesmen. The change would allow the commissioner to deny, suspend or revoke a registration of an investment advisor if the applicant or registrant is the subject of an order of another state or the federal securities and exchange commission denying, suspending or revoking specified privileges.

e. Page 7, line 15: Deletion of the words "subsection 10 of" is intended to make the denial, suspension and revocation powers of the commissioner applicable to conditions imposed by the entire section rather than to just those imposed in the sub-section. For example, broker-dealers and investment advisors, under 30-10-201(9), are required to keep accounts and records. Their failure to do so <u>should</u> be grounds for revocation of their registration.

f. Page 7, line 21 through line 23: The proposed deletion of language in this subsection is intended to resolve conflict between the deleted language and language in the introductory part of this same subsection 10. The commissioner, by reason of the introductory language in subsection 10, already has suspension powers of a summary nature, and restatement of those powers in this sub-part (j) is unnecessary. The deleted language, furthermore, is not part of the Uniform Securities Act from which this section 30-10-201, was adopted. It is, therefore, difficult to ascertain its true intent.

g. Page 8, line 23: The change of language proposed in this section is intended to conform the statute to the Uniform Securities Act from which it was adopted. The intent of the section is to make both an offer and a sale of an unregistered security a violation of the Act. As the section presently reads, there is confusion as to whether only an offer is a violation.

h. Page 12, line 17 through line 19: An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by notification. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register their securities offering because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

i. Page 12, line 20 through line 23: The originally proposed amendatory language for the subsection is withdrawn for the reason that it is unnecessary given the proposed amendment on page 13, line 1 extending the commissioner's period for review of the registration application. Should the 10 business day period for review prove inadequate for a particular security, the commissioner still has the ability to prevent the security registration from becoming effective by the issuance of a stop order.

j. j. Page 14, line 21 through line 23: An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by coordination. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register because there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

k. Page 14, line 24 through page 15, line 1: The originally proposed amendatory language for this subsection is withdrawn for the reason that it is unnecessary given the proposed amendment on page 15, line 10 extending the commissioner's period for review of the registration application. Should the 10 business day period for review prove inadequate for a particular security, the commissioner still has the ability to prevent the security registration from becoming effective by the issuance of a stop order.

l. Page 21, line 14 through line 16: An amendment is proposed to permit the commissioner to request information regarding an application for registration of securities by qualification. There are instances when issuers meeting the bare requirements of disclosure under this section should not be permitted to register becuase there is not sufficient protection afforded investors in the securities. The proposed change allows the commissioner to obtain additional information on an issuer, enabling the commissioner to better judge whether registration should be allowed.

m. Page 24, line 2 through line 5: The proposed amendment of this subsection sets forth the effective period of a registration of securities. Currently, this section fails to clearly state that a registration of securities is effective one year only, unless it is earlier revoked, terminated, or renewed. The changes are not substantive in nature, but are only intended to clarify the language and intent of the subsection.

n. Page 25, line 4 through 12: The changes requested for this subsection are primarily for clarification purposes only. The commissioner currently receives financial reports on issuers under all types of securities registrations. It is the intent of the proposed language to conform the law to current practices.

The commissioner also requests replacement of the language requiring filing of statements corresponding to those required under 30-10-203(2) and 30-10-305, with language permitting the commissioner to request any additional information he so desires. There are instances where aspects of a securities offering may change drastically during the period of effectiveness. Financial data, or the information provided in the statements required under 30-10-203(2) or 30-10-305, alone, are not sufficient to provide the commissioner the information needed to judge whether the public offering should continue.

o. Page 25, line 19 through page 26, line 7: Deletion of the term "investigated" is intended to eliminate confusion that may result from a comparison of that term to the word "examined". The commissioner also proposes elimination of language which presently requires him to establish the reasonable and customary rates to be charged for expenses incurred in the course of performing examinations. Examinations are not performed regularly, and computation of reasonable expenses on a case-by-case basis would more accurately assess the actual costs of a particular examination. This provides a more equitable billing system for the persons examined.

ROLL CALL

BUSINESS and INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION -- 1981 Date 3/20/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold			
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 20, 19 81

MR. PRESIDENT:

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 377

Hemstad (Senator Smith)

Respectfully report as follows: That House Bill No. 377

BE CONCURRED IN

~~XXXXXX~~

JRF

Frank W. Hazelbaker, Chairman.

STATE PUB. CO.
Helena, Mont.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 21, 1981

The executive meeting of the Business and Industry Committee was called to order by Chairman Hazelbaker at 10 a.m. in room 404 of the Capitol Building.

ROLL CALL: All members were present.

HOUSE BILL NO. 578: There was general discussion about the neces sity to strike the statement of intent, because it is not needed.

SENATOR REGAN moved to strike the statement of intent. The motion carried with the vote unanimous.

SENATOR REGAN moved as amended, be concurred in. Discussion about whether the title needs to be amended and if the funding needs to be reflected in the title.

The motion carried with Senator Goodover voting no. Senator Regan will carry.

HOUSE BILL NO. 692:

Discussion about the brand versus the trademark. Senator Regan moved to strike "per brand". After more discussion she withdrew her motion.

SENATOR BLAYLOCK moved to amend page 2, line 6, following $50, strike $25 PER BRAND and insert $50. The motion carried with all members voting aye.

SENATOR LEE moved as amended, be concurred in. The motion carried with the vote unanimous. Senator Lee will carry.

HOUSE JOINT RESOLUTION NO. 29:

After general discussion, Senator Lee commented he did not like the way the committee was set up. Everyone agreed this needed to be changed.

SENATOR REGAN suggested, we can throw the study in the pot but give it a low priority. More discussion.

SENATOR BOYLAN said it bothered him that so much money was being taken out of the state.

SENATOR BLAYLOCK: I move to amend line 18 and line 19 on page 2. We can insert "to be selected by the leaders of the respective parties" following Representatives and following Senate, we can insert "to be selected by the leaders of the respective parties."

There was discussion whether subsection 4 should be stricken and it was decided that it should be left in. The motion to amend carried with the vote unanimous.

SENATOR KOLSTAD moved be concurred in, as amended. The motion carried with the vote unanimous. Senator Kolstad will carry.

HOUSE BILLS NO. 376, 377, 378 and 380:

There was general discussion about the doubts the committee felt on House Bill No. 376.

SENATOR REGAN moved that the committee reconsider its action on concurring in House Bill No. 376. The motion carried with the vote unanimous.

SENATOR LEE moved to table and the motion carried with all members voting aye.

The committee decided the action taken on the other three bills would stand.

HOUSE BILL NO. 448:

SENATOR DOVER moved be concurred in.

There was general discussion about the fears of the committee if this bill is passed as it is presently written.

After rather heated general discussion Senator Regan said she would walk through the bill and point out the particular areas that were giving her trouble.

Page 10, subsection 4, that part is incredibly bad. The committee discussed the pros and cons of who supported and opposed the bill.

Senator Regan pointed out some of the defects in page 5, line 12. He would be able to value all his assets to count this as a tangible asset.

On page 7, lines 8 and 9, this would change the single premium life insurance from 4 1/2% to 5 1/2%. In essence, you really have, for your dollar, proportionately less cash value.

HOUSE BILL NO. 377

INTRODUCED BY HEMSTAD, E. SMITH

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY PART 2 OF THE ~~MONTANA~~ SECURITIES ACT OF MONTANA RELATING TO REGISTRATION OF DEALERS AND SECURITIES; AMENDING SECTIONS 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

HB 0377/02

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact

REFERENCE BILL

business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. ~~An application under this section is not filed until all required information is received.~~

(6) ~~If no denial order is in effect and no proceeding is pending under subsection (10) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.~~ WHEN THE REGISTRATION REQUIREMENTS ARE COMPLIED WITH, THE COMMISSIONER SHALL APPROVE THE REGISTRATION.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until ~~March 1~~ December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The

registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so

required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under

parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, or salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1

year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under ~~subsection (10) of~~ this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. ~~The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.~~

(11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the

applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 2. Section 30-10-202, MCA, is amended to read:

"30-10-202. Registration of securities. It is unlawful for any person to offer to or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless such security

is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter."

Section 3. Section 30-10-203, MCA, is amended to read:

"30-10-203. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30

days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the

registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously

entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208.; and

(l) such other information as the commissioner may require.

~~(3) A registration statement by notification is not filed until all required information is received by the commissioner.~~

~~(3)~~(4)(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at

~~3--p.m.--mountain--standard--time~~ noon the ~~second-full~~ 10th business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines."

Section 4. Section 30-10-204, MCA, is amended to read:

"30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) three copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or

similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date; ~~and~~

(h) a consent to service of process meeting the requirements of 30-10-208~~.~~; and

(i) such other information as the commissioner may require.

~~(2)--A--registration--statement--by-coordination-is-not filed-until-all-required--information--is--received--by--the~~

commissioner.

~~(2)~~ ~~(3)~~ (2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 ~~full~~ business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

~~(3)~~ ~~(4)~~ (3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the

offering price.

~~(4)~~ ~~(5)~~ (4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection ~~(2)~~ ~~(3)~~ (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection ~~(2)~~ ~~(3)~~ (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections ~~(2)(b)~~ ~~(3)(b)~~ (2)(B) and ~~(2)(c)~~ ~~(3)(c)~~ (2)(C) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under

30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 5. Section 30-10-205, MCA, is amended to read:

"30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection

(1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the

estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection

with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security

being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; and

(p) such other information as the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of

registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder."

Section 6. Section 30-10-206, MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document

filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are

registered, or by any registered broker-dealer. Every registration shall remain effective ~~until~~ for a period of 1 year unless it is revoked by the commissioner, ~~or until~~ terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined

in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) During the period ~~of--public--offering~~ IN WHICH THERE IS AN OFFERING ~~in--the--initial--distribution~~ of securities registered under the provisions of parts 1 through 3 of this chapter ~~by-notification-or-qualification,~~ AND FOR WHICH THERE IS NO EXEMPTION UNDER 30-10-104 OR 30-10-105, financial data ~~or--statements-corresponding-to those-required-under--the--provisions--of--30-10-203(2)--and 30-10-205-and-to~~ for the issuer's fiscal year and such other statements as the commissioner may require shall be filed with the commissioner annually, not less than 90 days after the end of each such year. If such statements are not certified, the commissioner may verify them by examining the issuer's books and records."

Section 7. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any issuer or broker-dealer who is ~~investigated-or~~ examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, ~~all--at-reasonable-rates~~

~~customary-therefor-and-as-established--and--adopted--by--the commissioner-upon-July-1,-1961,-and-annually-thereafter~~ upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization; however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its

right to do business in this state under parts 1 through 3 of this chapter."

Section 8. Coordination instruction. If ~~Bill~~ ~~(LC 554)~~ HOUSE BILL NO. 380 as introduced in the 47th Legislature is not passed and approved, the reference in 30-10-206(3) to 30-10-209(1)(b) (as amended in section 6 of this act) shall be changed to 30-10-209(2).

-End-